

1 Before the
2 **FEDERAL COMMUNICATIONS COMMISSION**
3 Washington, D.C. 20554

4 Notice of Proposed Rulemaking

CS Docket No. 02-52

5 Appropriate Regulatory Treatment for
6 Broadband Access to the Internet Over
7 Cable Facilities

8 **REPLY COMMENTS OF THE CITY OF LAS VEGAS, NEVADA**

9 These comments are filed by the City of Las Vegas, Nevada ("Las Vegas") in support of
10 the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance").
11 Like the Alliance, Las Vegas believes that local communities should be able to: (a) require cable
12 operators to obtain additional authorizations to use and occupy public rights-of-way to provide
13 non-cable services, and to enforce existing authorizations that have been granted for the service;
14 (b) obtain fair and reasonable compensation for use and occupancy of the public rights-of-way to
15 provide non-cable services; and (c) regulate cable companies in their provision of non-cable
16 services, as provided under the Cable Act.

17 These comments will provide information regarding the status of cable modem service in
18 our community.

19 1. Our community and the status of cable modem service.

20 Las Vegas is a city of over 500,000 people. It is served by Cox Communications ("Cox"),
21 which has approximately 130,000 subscribers in the city. Cox offers subscribers over 200
22 channels of video and audio programming, including both analog and digital channels. Cable
23 modem service is also offered in Las Vegas.

24 2. Our franchise and cable modem service.

25 Our franchise was issued in 1998, in anticipation that Cox would provide cable modem
26 service throughout the community as a part of its system rebuild/upgrade. Pursuant to Sections
27 1(z) and 7 of Cox' Franchise Agreement, we are entitled to receive franchise fees on cable modem
28 service "...to the extent permitted by applicable law."

1 Prior to October 2000, Cox was paying franchise fees on its cable modem revenues
2 pursuant to these provisions. In October 2000, Cox ceased paying franchise fees on its modem
3 service based on the 9th Circuit U. S. Court of Appeals' decision in the case of AT&T v. City of
4 Portland. Cox has continued to refuse to pay franchise fees on its modem revenues after the recent
5 declaratory ruling by the F.C.C. that cable modem service is not a cable service.

6 Based on Cox' cable modem revenues, which were reported by Cox through 2001 but then
7 deducted from the revenues on which franchise fees were paid, Las Vegas will lose \$1,000,000 or
8 more in 2002 as a result of Cox' refusal to pay franchise fees on such revenues. We expect the
9 loss of franchise fees to increase dramatically over time as the penetration rate for modem service
10 increases, the population in Las Vegas increases (the Las Vegas area is the fastest growing area in
11 the country), and the prices that Cox charges for modem service increase.

12 The payments of fees on cable modem revenues that Las Vegas received prior to October
13 2000, and which Las Vegas would continue to receive if not for the AT&T v. City of Portland
14 decision and the F.C.C.'s declaratory ruling, were an integral part of the consideration that Las
15 Vegas received for the grant of the franchise. There is no evidence that Cox' payment of franchise
16 fees on modem revenues prior to October 2000 in any way prevented or delayed the roll-out of
17 cable modem service in Las Vegas.

18 3. How we regulate cable modem service.

19 Las Vegas regulates Cox' cable service as a part of a consortium consisting of five local
20 jurisdictions (Las Vegas, Henderson, North Las Vegas, Boulder City and Clark County).
21 Collectively, these five entities are known as the "Regional Franchise Jurisdictions" or "RFJ's."

22 The RFJ's have designated one person (a "Franchise Specialist") to handle all cable
23 complaints, and Las Vegas pays its respective portion of the Franchise Specialist's salary and
24 expenses. The Franchise Specialist regularly receives complaints from customers regarding the
25 services provided by cable operators. These include complaints about traditional video
26 programming services and about cable modem service. On the average, the Franchise Specialist
27 receives approximately 100 complaints or inquiries per year concerning Cox' cable modem
28 service. Responding to these complaints requires significant staff time and effort.

1 There are many unique customer service problems associated with cable modem services.
2 In addition, it is often difficult, if not impossible to separate regulation of cable modem service
3 from the regulation of cable service in many critical respects:

- 4 • Cable modem service is marketed jointly with cable service.
- 5 • A single bill is sent for cable modem and cable services, so billing complaints involve
6 both.
- 7 • Customer service calls go to a single number, so telephone-answering policies affect both.
- 8 • A customer may call a single location to schedule installation of cable service and cable
9 modem service, and customer complaints about installations and missed appointments may
10 relate to both services.

11 As a result, when one service has problems, the quality of the other service can be affected.
12 Customers are advised on their bill by the cable operator that they can call the Franchise Specialist
13 with complaints. In our view, there is a substantial and continuing need to protect consumers of
14 cable modem service, in light of the complaints we receive and because of its close tie to video
15 services.

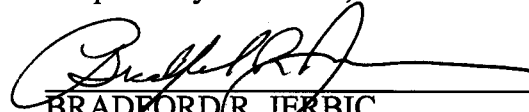
16 4. Support of government and educational access programming.

17 Our community believes it is very important to provide educational and government access
18 programming on its cable system. Pursuant to Las Vegas Municipal Code Sec. 6.20.800, 40% of
19 all franchise fees that Cox pays to Las Vegas are deposited into an enterprise fund that is used to
20 support educational and government access programming. Pursuant to Section 4 of Cox's
21 Franchise Agreement, Las Vegas pays \$150,000 from this fund for direct support of the local
22 educational access channel. Hence, the loss of \$1,000,000 per year in franchise fees on cable
23 modem revenues has a direct impact on the support and quality of educational and government
24 access programming in Las Vegas.

25 The negative impact that this loss of fees has on Las Vegas and its residents will ultimately
26 have negative effects on Cox itself. As satellite video providers add local broadcast channels to
27 their lineups, local access channels remain one of the few significant programming differences that
28 cable operators, unlike satellite providers, can provide to their customers. In short, it is good

1 public policy for all parties concerned to allow cities to require cable companies to pay franchise
2 fees on cable modem revenues.

3 Respectfully submitted,

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9 July 10, 2002
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